

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**AT NASHVILLE, TENNESSEE**

**August 22, 2001**

<b>IN RE:</b>	)	
	)	
	)	<b>DOCKET NO. 01-00113</b>
<b>PETITION OF GASCO DISTRIBUTION</b>	)	
<b>SYSTEMS, INC. TO APPROVE</b>	)	
<b>BYRDSTOWN, TENNESSEE FRANCHISE</b>	)	

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**INITIAL ORDER APPROVING PETITION OF GASCO DISTRIBUTION SYSTEMS,  
INC. FOR APPROVAL OF A GRANT OF A PRIVILEGE OR FRANCHISE BY TOWN  
OF BYRDSTOWN, PURSUANT TO TENN. CODE ANN. § 65-4-107**

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This matter is before the Tennessee Regulatory Authority ("Authority" or "TRA") for consideration of the Petition of Gasco Distribution Systems, Inc. ("Gasco" or the "Petitioner") for approval of the franchise or privilege granted to Gasco by the Town of Byrdstown, Tennessee ("Byrdstown" or the "Town"). On April 10, 2001, a hearing was held before Hearing Officer J. Richard Collier, for the purpose of allowing Gasco and Byrdstown to introduce evidence in support of their request for approval of Gasco's Petition, the Byrdstown Natural Gas Franchise Ordinance of 2000 ("Byrdstown Ordinance"), and the franchise for natural gas service granted to Gasco by Byrdstown.

After careful consideration of the Petition, the Byrdstown Ordinance and the entire record in this matter, including testimony from Gasco and Byrdstown, the Hearing Officer approves the Petition, the Byrdstown Ordinance, and the franchise granted to Gasco by Byrdstown.

## **Background**

On December 8, 1993, the Tennessee Public Service Commission (“TPSC”) entered an Order approving the transfer of a certificate of public convenience and necessity (“CCN”) for the operation of a natural gas distribution system from Jellico Gas Utility, Inc. to Gasco.<sup>1</sup> The CCN permitted Gasco to operate the gas system within Jellico, Tennessee. Gasco’s CCN was amended<sup>2</sup> on June 12, 1997 to include Pickett County, Tennessee, which is the county where Byrdstown is located. Also, on June 12, 1997, the Authority entered an Order approving a franchise agreement between Gasco and Pickett County, which provided for Pickett County to receive a franchise fee of two percent (2%) of Gasco’s net natural gas sales in exchange for an exclusive franchise to supply natural gas service in Pickett County, not including the Town of Byrdstown, for forty (40) years.<sup>3</sup> The Authority’s Order specifically stated that Gasco would file a separate franchise agreement with the Town of Byrdstown at a later date. On February 1, 2001, Gasco filed its Petition for approval of a franchise granted to Gasco through the Byrdstown Ordinance, said franchise being the subject of this docket.

## **The Byrdstown Ordinance**

On November 13, 2000, the Town of Byrdstown passed Ordinance 00-2, which grants to Gasco a franchise,

[t]o operate and maintain a gas system in the town of Byrdstown, Tennessee. Including a system of gas mains and service pipes for the purpose of transmitting and distributing gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public ground of the town of Byrdstown, Tennessee.<sup>4</sup>

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<sup>1</sup> See *Order*, Petition of Gasco Distribution Systems of Tennessee, Inc. for Approval of Transfer of Authority to Provide Utility Services and of Plant and Facilities from Jellico Gas Utility, Inc., to Gasco Distribution Systems of Tennessee, Inc., TPSC Docket No. 93-07841, December 8, 1993.

<sup>2</sup> *Order Amending Certificate of Convenience and Necessity*, In re: Petition of Gasco Distribution Systems, Inc. to Amend its Certificate of Convenience and Necessity, TRA Docket No. 97-00417, June 12, 1997.

<sup>3</sup> *Order Approving Pickett County Franchise*, In re: Petition of Gasco Distribution Systems, Inc. to Approve Pickett County Franchise, TRA Docket No. 97-00385, June 12, 1997, p. 2.

<sup>4</sup> Byrdstown Ordinance, p. 1.

Section 3 of the Ordinance provides as follows:

There is hereby granted by the Town of Byrdstown, Tennessee, to Gasco Distribution Systems, Inc., its successors and assigns, the exclusive right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator [sic] all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporation limits of the Town of Byrdstown and in the environs of said Town, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the Town and its environs, for the supplying and selling of said gas to said Town, and the inhabitants, institutions, and business thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures, and facilities as may be necessary for said purposes, to-wit: the transmission, distribution and sale of such gas to said Town and the inhabitants thereof, for domestic, commercial, industrial uses, and such other purposes for which it is or may hereafter be used.

A franchise fee is established in Section 13 of the Ordinance as follows:

Subject to approval by the Tennessee Regulatory Authority, the Town shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco Distribution Systems, Inc. located within the franchise area granted by the Town. The Company shall include said surcharge as a separate item on its bills to its customers in the Town and shall pay said amount received from its customers to the Town within twenty-one (21) days after receipt.

Section 4 of the Ordinance establishes a franchise term of twenty (20) years with automatic renewals consisting of twenty (20) year terms, subject to termination. Section 5 provides that all construction, operation, and maintenance in relation to the franchise shall comply with all applicable engineering and safety codes, including those of the TRA. Section 10 further provides that the Ordinance is subject to and incorporates all rules and regulations of the TRA. In addition, under Section 12, Gasco is not permitted to sell or transfer the rights conferred to it by the Ordinance without obtaining the approval of the TRA. Section 19 requires Gasco to obtain all necessary approvals for operation from the TRA.

Section 14 of the Ordinance provides grounds for termination of franchise by Byrdstown, including:

C. The Company fails to use reasonable diligence in making natural gas available to all residents of the Town. Reasonable diligence requires availability to at least sixty percent (60%) of the Town residents within twenty-four (24) months of the granting of this franchise. Reasonable diligence requires availability to ninety percent (90%) of the Town residents within forty-eight (48) months of granting the franchise, and availability to one-hundred percent (100%) of the Town's residents within seventy-two (72) months. For purposes of this section, Town shall mean the political boundaries of the Town on the date of the enactment of this Ordinance.

Further, Sections 15 and 20 of the Ordinance set forth the circumstances and conditions under which the franchise may be considered terminated and the resulting conveyance or abandonment of the natural gas system. Section 15 specifically provides:

In the event Company ceases to operate the utility for more than ninety (90) continuous days or in the event the authority to operate the utility is revoked or terminated by the Tennessee Regulatory Authority or in the event the franchise is terminated by the Town, then and in that event, the Company shall have the option, but not the obligation to convey the natural gas system to the Town for the Fair Market Value of the system as determined by the American Arbitration Association. The Town shall have ninety (90) days to accept or reject the conveyance of the system for fair market value.

### **Travel of this Case**

On February 1, 2001, pursuant to Tenn. Code Ann. § 65-4-107, Gasco filed its *Petition of Gasco Distribution Systems, Inc. to Approve Byrdstown, Tennessee Franchise* ("Petition") to provide natural gas services in Byrdstown, Tennessee. The Petition states that the franchise will result in gas services being provided in areas where service is not currently available. Further, the Petition states,

Both Gasco and Byrdstown believe that approval of this franchise will serve the public interest by bringing gas service, new industry, and jobs to Byrdstown.<sup>5</sup>

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<sup>5</sup> Petition, February 1, 2001, p. 1.

On March 27, 2001, the Authority issued a Notice setting this case for Hearing on April 10, 2001. The Notice was sent to the parties and, pursuant to Tenn. Code Ann. § 65-4-203, to other persons potentially interested in this matter. At the regularly scheduled Authority Conference held on April 3, 2001, the Directors appointed the General Counsel or his designee Hearing Officer in this matter to render a decision on the merits of the Petition. At the request of the Petitioner, the pre-filing of testimony was waived and live testimony and documentation pertaining to the Petition and franchise were presented at the Hearing.

### **Hearing**

The Hearing on the merits was held on April 10, 2001, with the following attorneys appearing on behalf of Gasco and Byrdstown:

Gasco Distribution Systems, Inc. – **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, Tennessee 37219; and

Town of Byrdstown – **Phillip M. Smalling, Esq.**, Hassler & Smalling, West Main Street, Byrdstown, Tennessee, 38549.

Members of Authority's Energy and Water Division and Gas Pipeline Safety Division attended and participated in the Hearing. A representative of the Consumer Advocate and Protection Division, Office of the Attorney General, attended but did not participate in the Hearing. Although interested utility districts, municipalities, and counties were provided notice of the Hearing pursuant to Tenn. Code Ann. § 65-4-203(b), no representatives of these entities were in attendance. There were no members of the public-at-large in attendance.

During the Hearing, the following filings were made a part of the evidentiary record: the Petition, the Byrdstown Ordinance, and documentation reflecting Gasco's proposed service to Byrdstown. Charles Hercher, vice president of operations for Gasco, and Paul Jordan, Mayor of the Town of Byrdstown, testified in support of the Petition. Both witnesses were examined by

counsel for Gasco and Byrdstown and responded to questions from the Authority. Gasco was directed to file specific exhibits after the Hearing. Late-filed exhibits included maps showing the location of gas service and copies of court orders relating to the termination of a previous gas franchise between the Town of Byrdstown and Ken Gas of Tennessee, Inc., Ken Gas of Byrdstown, Inc., and Kenneth R. Turner. At the conclusion of the Hearing, the Hearing Officer took all the remaining matters under advisement.

### **The Petitioner's Proof**

Charles Hercher testified on behalf of Gasco as the first witness. Mr. Hercher described Gasco's proposal to provide natural gas service to citizens of Byrdstown. Mr. Hercher testified that Gasco already has several large industrial customers in the Byrdstown area and by extending loops around Byrdstown with lateral connections, Gasco could serve around 250 customers in Byrdstown within a three (3) year time period.<sup>6</sup> Any additional financial burden to Gasco to operate and maintain the proposed system would be minimal because Gasco already has employees in the Byrdstown area servicing Gasco's industrial customers.<sup>7</sup>

According to Mr. Hercher, at the present time the citizens of Byrdstown rely on propane as their heating fuel. Several years ago the Town had natural gas service from local wells for a short period.<sup>8</sup> Mr. Hercher testified that the franchise is in the best interest of Gasco and of the people of Byrdstown because the town could replace a more expensive fuel source, propane, with less expensive natural gas. Gasco in turn, would gain a larger customer base in the Byrdstown area, which would provide some added revenues without much added expense.<sup>9</sup> At the conclusion of the expansion project, Gasco expects to have approximately 250 customers.<sup>10</sup>

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<sup>6</sup> See Transcript of Hearing, April 10, 2001, pp. 6-14 (Testimony of Mr. Charles Hercher, Vice President of Operations for Gasco).

<sup>7</sup> *Id.*, at pp. 14-15.

<sup>8</sup> *Id.*, at pp. 16-17.

<sup>9</sup> *Id.*, at p. 15.

<sup>10</sup> *Id.*, at pp. 17-18.

Mr. Hercher testified that Gasco plans to conduct a street-by-street survey in Byrdstown to determine what certain percentage of residents desire service from Gasco and then lay pipe according to the survey. Gasco is already serving customers outside of the city limits through a franchise in the County that permits it to serve the Hutchison plants.<sup>11</sup> According to Mr. Hercher, Gasco has more than enough firm capacity to provide service to customers, in part because Gasco bought extra capacity in the summer of 2000.<sup>12</sup> Gasco is considering using part of the gas distribution system already in the ground in Byrdstown, primarily some four-inch plastic lines in the downtown area, and will be testing this section to determine whether it is operable.<sup>13</sup>

The system Gasco will install will be one hundred percent (100%) plastic, so very little maintenance will be required once construction is completed. Mr. Hercher testified that Gasco will probably subcontract much of the construction.<sup>14</sup> Once the system is in operation, Gasco will be checking meters, pressures, and regulators.<sup>15</sup> Mr. Hercher stated that Gasco has not determined the cost to the consumer to tap onto Gasco's line. In the past, a tap fee of \$150 has been requested in most areas, with a cost for the service line of around \$1.00 per foot.<sup>16</sup>

According to Mr. Hercher, the supply point for the gas supplied to Byrdstown will be south of Deer Lodge, Tennessee, originating in Morgan County and traveling through Fentress County.<sup>17</sup> Mr. Hercher stated that the service line from which the proposed service will be

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<sup>11</sup> *Id.*, at p. 18. See *Order Approving Picket County Franchise*, TRA Docket No. 97-00385, June 12, 1997. Gasco obtained approval of a special contract with Hutchinson Byrdstown Limited Partnership through the Authority's Order in TRA Docket No. 97-00386, June 12, 1997.

<sup>12</sup> *Id.*, at p. 20.

<sup>13</sup> *Id.*, at pp. 21-22.

<sup>14</sup> *Id.*, at p. 24.

<sup>15</sup> *Id.*, at pp. 24-25.

<sup>16</sup> *Id.*, at p. 26.

<sup>17</sup> *Id.*, at p. 38.

provided to Byrdstown does not run through any areas where Gasco does not already have a CCN or a franchise.<sup>18</sup>

Mr. Hercher testified that Gasco currently provides gas service to Jellico, Tennessee and manages a system in Crossville, Tennessee.<sup>19</sup> Gasco also has some residential customers within Pickett County.<sup>20</sup> Mr. Hercher testified that Gasco intends to comply with all TRA regulations, including those pertaining to the minimum federal safety standards.<sup>21</sup>

Mayor Paul Jordan testified that in his opinion approval of the franchise is in the best interest of the residents of Byrdstown.<sup>22</sup> According to Mayor Jordan, Byrdstown was approached by other companies proposing to provide gas service, but the Town had concerns that these companies could not be relied upon to carry through with their plans.<sup>23</sup> After consideration, Gasco emerged as the top choice for providing service to the town.<sup>24</sup> Mayor Jordan testified that the requirement under Section 14 of the Ordinance that gas be available to one hundred percent (100%) of the customers in Byrdstown within 72 months should be interpreted as referring to one hundred percent (100%) of the residents who desire the gas services, rather than one hundred percent (100%) of all homes and businesses.<sup>25</sup>

According to the City Attorney, Phillip Smalling, the Byrdstown Ordinance provides for a franchise fee of “up to two percent (2%)” because it was the town council’s intent to leave room to negotiate a lower fee, if necessary, in order to make sure that the project got under way. Mr. Smalling stated that the Town’s chief motivation was to provide gas service to its residents rather than to obtain revenues from the franchise fee.<sup>26</sup>

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<sup>18</sup> *Id.*, at p. 43.

<sup>19</sup> *Id.*, at p. 41.

<sup>20</sup> *Id.*, at p. 41.

<sup>21</sup> *Id.*, at p. 38.

<sup>22</sup> See Transcript of Hearing, April 10, 2001, p. 53 (Testimony of Mr. Paul Jordan, Mayor of Town of Byrdstown).

<sup>23</sup> *Id.*, at p. 54.

<sup>24</sup> *Id.*, at p. 54.

<sup>25</sup> *Id.*, at pp. 55-56.

<sup>26</sup> See Transcript of Hearing, April 10, 2001, p. 55 (Testimony of Mr. Phillip Smalling, Byrdstown City Attorney).



Mr. Smalling stated that in the event of approval of the franchise, the Town will propose to purchase the old existing lines from the current owner, with the purchasers being Gasco or the Town separately or jointly.<sup>27</sup> Mr. Smalling stated that Byrdstown will attempt to purchase the old system from a company in Texas but may resort to a tax sale,<sup>28</sup> although some resolution will have to be reached with the county because there are delinquent county as well as city taxes.<sup>29</sup> Mr. Smalling stated that the Chancery Court ruled that the earlier gas franchise was null and void but recognized that a partner in Texas has an ownership interest at the present time, subject to the taxes owed to the Town and the County.<sup>30</sup> The Ordinance contains a provision that allows the Town to terminate the franchise in the event that Gasco does not pay its taxes in a timely manner.<sup>31</sup>

#### **Applicable Statutes**

Relying on Tenn. Code Ann. § 65-4-107, the Petition seeks Authority approval of the privilege or franchise granted to Gasco by the Byrdstown Ordinance. Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”<sup>32</sup> Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose

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<sup>27</sup> *Id.*, at p. 61.

<sup>28</sup> *Id.*, at pp. 50-51.

<sup>29</sup> *Id.*, at p. 51.

<sup>30</sup> *Id.*, at p. 62. See also, Late-Filed Exhibits, copies of Chancery Court orders, filed by Byrdstown on April 23, 2001.

<sup>31</sup> *Id.*, at p. 62.

<sup>32</sup> Tenn. Code Ann. § 65-4-107.

conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . .”<sup>33</sup>

A privilege or franchise granted by the State or a political subdivision thereof to a public utility is not valid until approved by the Authority, after a hearing and a determination of the public convenience and necessity and the public interest. Notwithstanding the assertion in the Petition that the public interest will be served, the Authority must still make its own determination of the public interest. Further, the Byrdstown Ordinance does not contain a statement of public necessity or public interest.

The franchise granted to Gasco, as set forth in the Byrdstown Ordinance, provides that Gasco will pay a franchise fee of up to two percent (2%) of the natural gas sales from Gasco customers located within the franchise area granted by the Town. Tenn. Code Ann. § 65-4-105(e) provides:

Any franchise payment or other payment for the use of public streets alleys or other public places or any license, privilege, occupation or excise tax payment, which after February 24, 1961, may be made by a utility to a municipality or other political subdivision, except such taxes as are presently provided for under existing statutes and except such franchise payment or other payments as are presently exacted from the utility pursuant to the terms of any existing franchise or other agreement, shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the authority in fixing the rates and charges of the utility.<sup>34</sup>

### **Findings of Fact and Conclusions of Law**

After reviewing the record in this case, considering the testimony of the witnesses, and applying the appropriate statutes to the facts, the Hearing Officer makes the following findings of fact and conclusions of law:

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<sup>33</sup> Tenn. Code Ann. § 65-4-107.

<sup>34</sup> Tenn. Code Ann. § 65-4-105(e).

1. While approval of the franchise granted to Gasco by Byrdstown is required, a CCN is not required for the construction of the pipeline or the provision of service by Gasco to the Town of Byrdstown. By the Authority's orders of June 12, 1997, Gasco has already obtained a CCN for Pickett County and approval of a franchise granted to Gasco by Pickett County. The Order approving the Pickett County franchise expressly did not include Byrdstown as within the franchise agreement. Gasco has complied with the Authority's Order of June 12, 1997 by filing a separate petition for approval of the Byrdstown Ordinance and franchise.

2. The Petitioner has made a sufficient showing that the franchise granted to Gasco by the Town of Byrdstown is "necessary and proper for the public convenience and properly conserves the public interest" pursuant to Tenn. Code Ann. § 65-4-107.

Gasco and Byrdstown have provided testimony and documentation which demonstrates the beneficial nature of the proposed service to the residents of Byrdstown as follows:

- (a) Residents of Byrdstown currently use propane as their source of heating fuel.
- (b) Propane has been an extremely expensive source of fuel and, at times, has not been readily available to residents when supplies have been low or delivery has been hindered for reasons such as adverse weather conditions.
- (c) A significant number of residents have expressed an interest in changing from propane to natural gas as a source of heating fuel.
- (d) Gasco has demonstrated a reliable presence in the Byrdstown area, having provided natural gas service to industrial plants in Pickett County.
- (e) The Town of Byrdstown has concluded that Gasco has the capability and experience to provide natural gas service to the residents of Byrdstown.

(f) The provision of natural gas to the residents of Byrdstown will result in a more reliable, less expensive source of fuel.

(g) Gasco has demonstrated a reasonable plan for providing natural gas service to the residents of Byrdstown, including the possibility of utilizing parts of the existing abandoned gas system, after the proper testing, so as to avoid the additional expense and inconvenience of laying new lines. There were no intervenors in this case, therefore there is no opposition to Gasco's proposed pipeline construction or service to the residents of Byrdstown.

(h) Gasco has represented that it has the means and capacity to provide natural gas to the residents of Byrdstown and the ability to maintain the system. Further, Gasco has represented that it will comply with all rules and regulations of the Tennessee Regulatory Authority, including those rules pertaining to the minimum federal safety requirements.

(i) The franchise ordinance provides that Gasco will receive an exclusive franchise to supply natural gas service in the Town of Byrdstown for twenty (20) years, with automatic renewals consisting of twenty (20) year terms. The franchise ordinance sets forth conditions whereby the Town of Byrdstown may terminate the franchise granted to Gasco if Gasco fails to perform, and it also provides for situations under which the Town could obtain ownership of the natural gas system if deemed abandoned by Gasco.<sup>35</sup>

3. The franchise ordinance provides that Gasco shall pay to Byrdstown a surcharge (franchise fee) of up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco located within the franchise area granted by Byrdstown. Gasco shall include the franchise fee as a separate line item on each customer's bill in

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<sup>35</sup> Such provisions may prevent the situation which Byrdstown recently faced when a franchisee failed to pay real and personal property taxes and abandoned its gas system.

compliance with Tenn. Code Ann. § 65-4-105(e). Although the proposed franchise fee does not appear to be prohibited on the basis of Tenn. Code Ann. § 65-4-105(e) or any other Tennessee statute, the Authority can and should scrutinize the fee under the standards contained in Tenn. Code Ann. § 65-4-107 as a part of the Authority's determination of whether the franchise itself "properly conserves the public interest." In this instance, the proposed franchise fee is in compliance with Tenn. Code Ann. § 65-4-105(e) and is not so excessive as to render the franchise contrary to the public interest. In addition, the evidence indicates that Byrdstown may choose to impose a franchise fee lower than two percent (2%).

4. Based upon the testimony presented by Gasco and the Town of Byrdstown, Section 14 of the franchise ordinance is amended such that compliance therewith can be demonstrated by showing availability of gas to one hundred percent (100%) of the residents of Byrdstown who have requested gas service.

Based upon the foregoing findings and conclusions,

**IT IS THEREFORE ORDERED THAT:**

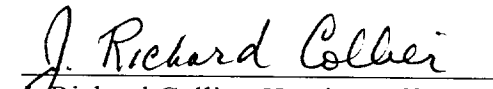
1. The Ordinance of the Town of Byrdstown, (No. 00-2), as amended herein and attached to this Order as Exhibit A, is hereby approved and is incorporated in this Order as if fully rewritten herein.

2. The franchise granted to Gasco Distribution Systems, Inc. by the Town of Byrdstown, as embodied in the Byrdstown Ordinance, as amended, is hereby approved.


3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

5. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Within sixty (60) days from the date of this Order, any party aggrieved by the decision of the Hearing Officer may file a Petition for Review in the Middle Section of the Tennessee Court of Appeals.

  
Richard Collier, Hearing Officer

ATTEST:

  
K. David Waddell, Executive Secretary



ORDINANCE

00-2

AN ORDINANCE GRANTING A FRANCHISE TO GASCO DISTRIBUTION SYSTEMS, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE TOWN OF BYRDSTOWN, TENNESSEE. INCLUDING A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUND OF THE TOWN OF BYRDSTOWN, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF BYRDSTOWN, TENNESSEE, as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "BYRDSTOWN NATURAL GAS FRANCHISE ORDINANCE OF 2000".

SECTION 2. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present terms include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "TOWN" is the Town of Byrdstown, Tennessee, a municipal corporation;

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- (2) "COMPANY" is Gasco Distribution Systems, Inc., the grantee of the rights under this franchise, a corporation, domesticated for the purpose of doing business within the State of Ohio, with its principal place of business at 4435 East Pike, Zanesville, Ohio 43701.
- (3) "PERSON" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. There is hereby granted by the Town of Byrdstown, Tennessee, to Gasco Distribution Systems, Inc., its successors and assigns, the exclusive right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporation limits of the Town of Byrdstown and in the environs of said Town, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the Town and its environs, for the supplying and selling of said gas to said Town, and the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures, and facilities as may be necessary for said

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purposes, to-wit: the transmission, distribution and sale of such gas to said Town and the inhabitants thereof, for domestic, commercial, industrial and institutional uses, and such other purposes for which it is or may hereafter be used.

SECTION 4. This franchise and the rights herein granted shall take effect and be enforced from and after the effective date hereof, as required by law, and upon the filing of acceptance by the Company and approval by the TRA, and shall continue in force and effect for a term of twenty (20) years after the effective date. The franchise shall automatically continue for consecutive twenty (20) year terms unless terminated by either the Town or the Company pursuant to this Section. The Company has the right to terminate the franchise effective at the end of any term by providing written notice to the Town at least one (1) year prior to the end of that term. The Town has the right to terminate the franchise only for "Just Cause", at the end of any term by providing written notice to the Company at least one (1) year prior to the end of that term, specifying the reasons constituting "Just Cause". For purposes of this Section 4, "Just Cause" shall mean the Company's material failure to: (i) provide a safe and adequate service to its customers in the Town; or (ii) the Company's failure to comply with the terms of this ordinance. Company has the right to contest the determination of "Just Cause" before any legal forum having jurisdiction. If contested, the determination shall not take effect until approved by a legal forum having jurisdiction.

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SECTION 5. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise shall be laid, constructed, maintained and operated in accordance with acceptable engineering practices and in full accord with any and all applicable engineering codes and safety codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee, Ordinances of the Town of Byrdstown and the Rules and Regulations of the Tennessee Regulatory Authority or any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be so construed as not to interfere with the drainage of said Town, or interfere with or injure any street, sewer or other public improvement which said Town has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds of said Town. Company shall provide detailed maps, descriptions or other documents necessary for the Town officials to locate and/or be aware of the location of all gas lines, equipment and distribution system facilities.

SECTION 6. When the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other

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public grounds are opened or any other opening is made by the Company within the Town, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said Company, said Company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by federal, state or local laws.

SECTION 7. In the event that any time during the period of this franchise the Town shall lawfully elect to alter, or change the grade of, any street, alley or other public ways in which the Company is maintaining gas mains, pipes or other appliances and fixtures, the Company, upon reasonable written notice by the Town, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation.

SECTION 8. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered by the Company, the Company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the approval of the Town's

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Consulting Engineer, Codes Inspector, or other responsible agent of the Town, provided, however, that such approval shall not be unreasonably withheld. In the event the Company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the Town may itself, after giving the Company reasonable written notice, make restoration and charge the costs thereof to the Company.

SECTION 9. The Company shall, at all times, defend, indemnify and hold the Town and its Mayor, Recorder and Board of Aldermen, in their official and individual capacities, harmless from and against any and all claims for injury to any person or property by reason of the failure of the Company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs, or alterations are being made or generally in the day to day operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Town on account thereof, and shall have been afforded the opportunity fully to defend the same. Company further agrees that it will maintain liability insurance coverage in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS for personal injuries and not less than FIVE MILLION (\$5,000,000.00) DOLLARS for property damage. Company shall provide verification of such insurance coverages upon

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request. The indemnification of Town and its officers by the Company for any claims, demands, suits, actions or judgments related to installation, maintenance or day to day operation of the utility system shall also include any reasonable attorneys fees and direct costs incurred by Town.

SECTION 10. The Town and the Company hereby agree that this Ordinance shall, from time to time, be subject to Rules and Regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority itself; and that all such Rules and Regulations shall be and become part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set forth in full. The Company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority.

SECTION 11. Nothing contained herein shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service, from using any easements for gas service which are shown on any plat or plats or any portion of the Town heretofore or hereafter platted or

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recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 12. The Company shall not assign, sell or transfer the rights granted by this Ordinance without the approval of the Tennessee Regulatory Authority. Even if granted, no sale or transfer of the gas plant or system, or the transfer or any rights under this franchise shall be effective until the vendee, assignee or lessee has filed in the Office of the Town Recorder as instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof.

SECTION 13. Subject to approval by the Tennessee Regulatory Authority, the Town shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco Distribution Systems, Inc. located within the franchise area granted by the Town. The Company shall include said surcharge as a separate item on its bills to its customers in the Town and shall pay said amount received from its customers to the Town within twenty-one (21) days after receipt. Interest on any unpaid amounts due will accrue after the due date at the rate of eight percent (8%). The Town shall be permitted to audit or inspect records of Company for compliance with this provision or any other provision of this franchise document.

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SECTION 14. The Company and Town acknowledge that the franchise can be terminated by the Town for the following reasons:

- a. The Company fails to comply with any term or condition of the Ordinance and fails to cure the failure within ninety (90) days, after notice of the failure.
- b. The Company fails to remit franchise fees collected from customers for a period of ninety (90) days.
- c. The Company fails to use reasonable diligence in making natural gas available to all residents of the Town. Reasonable diligence requires availability to at least sixty percent (60%) of the Town residents within twenty-four (24) months of the granting of this franchise. Reasonable diligence requires availability to ninety percent (90%) of the Town residents within forty-eight (48) months of granting the franchise, and availability to one-hundred percent (100%) of the Town's residents within seventy-two (72) months. For purposes of this section, Town shall mean the political boundaries of the Town on the date of the enactment of this Ordinance.
- d. Ninety (90) days after written notice the Company fails to timely pay real estate and personal property taxes assessed by the Town or Pickett County. Provided, however, no special tax or tax rate shall be imposed upon the Company by the Town. To the extent permitted by law, the Company shall not be assessed any taxes for improvements until they are placed into service.
- e. The Company ceases to operate the utility for more than ninety (90) continuous days or ceases to operate the system in a manner that provides residents with a reliable source of natural gas and fails to cure the failure within ninety (90) days after written notice.

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- f. The Company voluntarily ceases service to the Town without TRA approval.

SECTION 15. In the event Company ceases to operate the utility for more than ninety (90) continuous days or in the event the authority to operate the utility is revoked or terminated by the Tennessee Regulatory Authority or in the event the franchise is terminated by the Town, then and in that event, the Company shall have the option, but not the obligation to ~~re~~convey the natural gas system to the Town for the Fair Market Value of the system as determined by the American Arbitration Association. The Town shall have ninety (90) days to accept or reject the conveyance of the system for fair market value.

SECTION 16. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the Company, at its election (to be given to the Town by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 17. The Company shall, within thirty (30) days after the passage of this Ordinance, file with the Town Recorder of

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the Town of Byrdstown its unconditional acceptance of the terms and conditions of this Ordinance signed by its President and, after the filing of such acceptance, this Ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and Orders lawfully issued by the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority) be the measure of the rights, powers, obligations, privileges and liabilities of the Town and of the Company.

SECTION 18. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company subject to the provisions of Section 12 on assignments.

SECTION 19. Company shall be responsible for obtaining all necessary approvals for the operation of the gas utility from the Tennessee Regulatory Authority or any other regulatory agency. Town agrees to cooperate to the extent reasonable and necessary for obtaining same.

SECTION 20. In the event this franchise terminates for just cause, Company shall remove all lines, equipment or distribution system existing on or in Town owned properties and rights-of-way if required to do so by the Town. The Company shall

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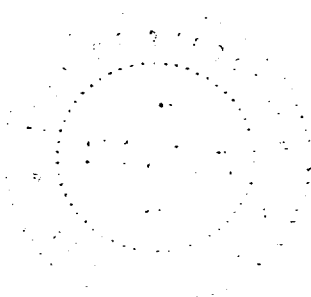
be permitted one-hundred and twenty (120) days to perform removal. In the event removal does not occur, any lines, equipment or system will be considered to be abandoned.

SECTION 21. All notices required hereunder shall be delivered or mailed to the following official addresses:

GASCO DISTRIBUTION SYSTEMS, INC.  
4435 EAST PIKE  
ZANESVILLE, OHIO 43701

TOWN OF BYRDSTOWN  
ATTN: MAYOR AND ALDERMEN  
P.O BOX 325  
109 WEST MAIN STREET  
BYRDSTOWN, TENNESSEE 38549

SECTION 22. This Ordinance is subject to the approval of the Tennessee Regulatory Authority. This franchise shall take effect immediately, the public welfare so requiring it.



TOWN OF BYRDSTOWN, TENNESSEE

BY: Paul Jordan, Mayor  
PAUL JORDAN, MAYOR

ATTEST:

Glen Bernis

TOWN RECORDER

Passed First Reading: 10-30-00

Passed Second Reading: 11-13-00

11-13-00  
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